

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:17-CV-496-BO

LAMIKKA S. BELL,)
)
Plaintiff,)
)
v.)
)
ATLANTIC COAST COLLEGES, INC.,)
DELTA CAREER EDUCATION)
CORPORATION, and MILLER MOTTE)
BUSINESS COLLGE, INC., all trading as)
MILLER-MOTTE COLLEGE,)
)
Defendants.)

ORDER

This cause comes before the Court on defendants' motion to dismiss or stay and compel mediation and arbitration. For the reasons that follow, the motion is granted in part.

BACKGROUND

Plaintiff filed this action on September 29, 2017, alleging a claim for employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* In response to the complaint, defendants, appearing through counsel, filed the instant motion to dismiss or to stay and compel arbitration and mediation. Defendants attached to their motion to dismiss an "employment acknowledgement" form which is nearly illegible as filed but which, defendants contend, includes a mandatory dispute resolution clause which requires that all disputes relating to plaintiff's employment be mediated first, and if not resolved in mediation, be submitted to binding arbitration. Defendants argue that this Court lacks jurisdiction and that plaintiff has failed to state a claim for relief because she is bound by the dispute resolution clause and has waived her right to file a civil complaint in federal court. Fed. R. Civ. P. 12(b)(1) & (6).

Alternatively, defendants ask the Court to stay this matter to allow the case to proceed to mediation and/or arbitration. Plaintiff does not dispute the existence or applicability of the dispute resolution clause and expressly consents to mediation and arbitration. [DE 21].

After the motion to dismiss or stay became ripe for ruling, counsel for defendants moved for leave to withdraw. The motion was allowed by order entered January 24, 2018. [DE 25]. In the order permitting defense counsel to withdraw, defendants, which are all corporate entities, were ordered to cause new counsel to file a notice of appearance within twenty-one days of the filing of the order. The party defendants were further advised that failure to do so may result in sanctions, including entry of default judgment. The order was served by the clerk on counsel for the parties as well as on the general counsel and chief compliance officer of defendant Delta Career Education Corporation, the corporate parent of defendant Atlantic Coast Colleges, Inc. and Miller-Motte Business College, Inc. To date, no counsel has noticed an appearance on behalf of defendants in this action.

DISCUSSION


In light of plaintiff's consent to mediation of this matter, the Court GRANTS defendants' motion insofar as it requests a stay in order to complete voluntary mediation. However, corporations may not appear in federal court *pro se*. *Rowland v. California Men's Colony*, 605 U.S. 194, 201-02 (1993). Thus, prior to any mediation being conducted, defendants must retain counsel. Defendants are ORDERED to retain counsel who shall file a notice of appearance not later than April 26, 2018. Failure to comply with this deadline SHALL result in sanctions, which may include entry of default and default judgment. Should counsel for defendants timely notice an appearance, the Court will enter an order directing the parties to select a mediator and proceed to mediation. The Court will retain jurisdiction over this action while the parties attempt

mediation, and the Court makes no ruling at this time as to the appropriateness of a stay to conduct binding arbitration. Thus, the remainder of defendants' motion to dismiss is denied without prejudice.

CONCLUSION

Accordingly, the motion to dismiss [DE 19] is GRANTED IN PART and DENIED IN PART without prejudice. Defendants are ORDERED to retain counsel who shall file a notice of appearance not later than April 26, 2018, and failure to comply with this deadline SHALL result in sanctions. The clerk is DIRECTED to serve a copy of this order on counsel for plaintiff and on defendants through Charles P. Brissman, Esq., General Counsel and Chief Compliance Officer, Delta Career Education Corporation, 99 Canal Center, Suite 201, Alexandria, VA 22314.

SO ORDERED, this 6 day of April, 2018.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE